

FILED

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

UNITED STATES OF AMERICA and the
STATE OF CALIFORNIA ex rel.
ERIN HAYES and RICHARD PONDER,

Plaintiffs,

v.

COVIDIEN, INC., a corporation,
Defendant.

CASE NO. C 14-1511 EDL

**NOTICE OF INTERVENTION FOR
PURPOSES OF SETTLEMENT;
[PROPOSED ORDER] TO UNSEAL**

FILED UNDER SEAL

1 The United States, the State of California, Relators, and Defendant have entered into an
2 agreement to resolve certain claims in this action ("Agreement"). In light of this Agreement, and
3 for the purpose of effectuating and formalizing that resolution, pursuant to the False Claims Act,
4 31 U.S.C. §§ 3730(b)(2) and (4), the United States respectfully advises the Court of its decision
5 to intervene for the purposes of settlement. The State of California also intervenes in this action
6 for the purposes of settlement, pursuant to the California False Claims Act, Cal. Gov't Code
7 § 12650 *et seq.*

8 1. Specifically, the United States and the State of California intervene in this action
9 with respect to civil claims predicated upon the following factual allegations (the "Covered
10 Conduct"):

11 The United States and the States contend that they have certain civil claims against
12 Covidien arising from Covidien's provision of practice development support and/or
13 market development support to health care providers located in California and
14 Florida during the period January 1, 2011, through September 30, 2014, to induce
15 those health care providers' purchase of ClosureFAST™ radiofrequency ablation
16 catheters, in violation of the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b, thereby
17 causing the submission of false claims to Medicare and to the California and Florida
18 Medicaid programs.

19 2. Under the terms of the Agreement, the United States, the State of California, and
20 Relators are obligated to promptly sign and file a Stipulation of Dismissal of this action
21 following the receipt of the Settlement Amount, which must be received no later than 10 days
22 after the Effective Date of the Agreement.

23 3. It is the United States' position that applications filed by the United States for
24 extensions of the investigative period, any applications for partial lifting of the seal, and any
25 orders previously entered in this matter should properly remain under seal, because such papers
26 discuss the content and extent of the United States' investigation and are provided by law to the
27 Court alone for the sole purpose of evaluating whether the seal and time for making an election
28 to intervene should be extended and/or partially lifted. However, the United States recognizes
that the Court disagrees with this position, as set forth in *United States v. Broker Solutions, Inc.*,
Civ. No. 17-04384-EDL, ECF No. 17 (Aug. 6, 2018). Accordingly, the United States and the
State of California request that the Court unseal this action. Relators consent to this request.

1 A proposed order accompanies this Notice.

2 DATED: February 1, 2019

3 March

JOSEPH H. HUNT
Assistant Attorney General

4 DAVID L. ANDERSON
United States Attorney

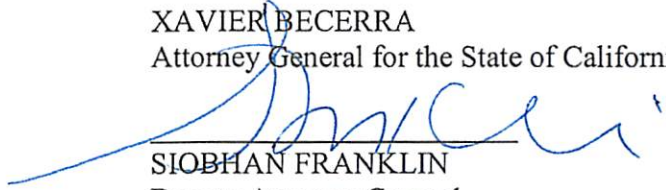
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14 Attorneys for the United States of America

15 DATED: February 27, 2019

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[PROPOSED] ORDER

The United States and the State of California having intervened in this action for purposes of settlement pursuant to the False Claims Act, 31 U.S.C. § 3730(b)(2) and (4), and the California False Claims Act, Cal. Gov't Code § 12650 *et seq.*, IT IS HEREBY ORDERED THAT:

1. This case shall be unsealed.
2. All other matters occurring in this action after the date of this Order shall be publicly filed.

IT IS SO ORDERED.

Dated: March 7, 2019


HON. ELIZABETH D. LAPORTE
United States Magistrate Judge